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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,969	07/30/2003	Edward Sueta JR.	MACIEP 3.0-002	9532
530	7590	01/13/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			HSIEH, SHIH YUNG	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/629,969

Applicant(s)

SUETA ET AL.

Examiner

Shih-yung Hsieh

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-20 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 10-13, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Novo (4,685,373).

Regarding claims 1-3, and 7, Novo discloses a wind instrument comprising an elongated body (12) having first and second ends (Fig. 1), said elongated body including a passage way therein extending longitudinally along at least a portion of the length thereof between said first and second ends (Figs. 1 and 8), a mouthpiece (30) arranged at said first end of said elongated body and having an opening (32) to permit air to be blown thereon, a plurality of apertures (34) arranged along said elongated body and opening to said passage way, said elongated body defining a compartment (52), and a light source (58) mounted in said compartment operable to transmit light longitudinally along said elongated body (Fig. 9 and col. 2, lines 20-26).

Regarding claims 10 and 17, see above, and a power source (78) connected to said at least one light-emitting device, and a switch (70) for actuating the at least one light-emitting device between on and off states.

Regarding claims 4-5, and 15, Novo discloses the claimed invention (col. 5, line 29, and Fig. 11).

Regarding claims 11-13, Novo discloses the claimed invention (col. 2, lines 20-25).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Tanaka (5,929,361).

Regarding claims 6 and 16, Novo discloses the claimed invention except that said plurality of LEDs comprises multiple colored LEDs to transmit a plurality of colored and colorless light.

Tanaka teaches a plurality of LEDs comprising multiple colored LEDs for status indication (col. 14, lines 45-47). It would have been obvious to one having ordinary skill in the art to modify Novo's instrument as taught by Tanaka to include said plurality of LEDs comprises multiple colored LEDs to transmit a plurality of colored and colorless light for the purpose of providing status indication.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Sapinski (3,854,370).

Regarding claim 14, Novo discloses the claimed invention except that said light-emitting device comprises at least one incandescent light source.

Sapinski teaches a light-emitting device comprising at least one incandescent light source (24) for allowing the musician to practice regardless of ambient light conditions (col. 1, lines 66-68). It would have been obvious to one having ordinary skill in the art to modify Novo's instrument as taught by Sapinski to include said light-emitting device comprises at least one incandescent light source for the purpose of allowing the musician to practice regardless of ambient light conditions.

6. Claim 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Decker (5,107,743).

Regarding claim 18, Novo discloses the claimed invention except that electronic circuitry electrically connected to said switch for automatically activating and deactivating said plurality of light-emitting devices into on and off states.

Decker teaches electronic circuitry (Figs. 2 and 3) electrically connected to a switch (7) for automatically activating and deactivating a plurality of light-emitting devices (9, and col. 5, line 17) into on and off states (col. 6, lines 53-57). It would have been obvious to one having ordinary skill in the art to modify Novo's instrument as taught by Decker to include electronic circuitry electrically connected to said switch for automatically activating and deactivating said plurality of light-emitting devices for the purpose of indicating on and off states.

Regarding claims 19-20, see above statement in item 2.


7. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The claims are allowable over the prior art for at least the reason that the prior art fails to reasonably teach or suggest in claim 8 that said compartment arranged at said lower side of said elongated body whereby said light source directs light longitudinally along said lower side of said elongated body as set forth in the claimed combination.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shih-yung Hsieh whose telephone number is 571-272-2065. The examiner can normally be reached on 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SHIH-YUNG HSIEH  
PRIMARY EXAMINER